United Nations A/CN.9/933

General Assembly

Distr.: General
3 April 2018

Original: English

United Nations Commission on International Trade Law
Fifty-first session
New York, 25 June–13 July 2018

Report of Working Group I (MSMEs) on the work of its thirtieth session (New York, 12–16 March 2018)

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I. Introduction

1. At its forty-sixth session, in 2013, the Commission requested that a working group should commence work aimed at reducing the legal obstacles encountered by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle.[1] At that same session, the Commission agreed that consideration of the issues pertaining to the creation of an enabling legal environment for MSMEs should begin with a focus on the legal questions surrounding the simplification of incorporation.[2]

2. At its twenty-second session (New York, 10 to 14 February 2014), Working Group I (MSMEs) commenced its work according to the mandate received from the Commission. The Working Group engaged in preliminary discussion in respect of a number of broad issues relating to the development of a legal text on simplified incorporation[3] as well as on what form that text might take,[4] and business registration was said to be of particular relevance in the future deliberations of the Working Group.[5]

3. At its forty-seventh session, in 2014, the Commission reaffirmed the mandate of Working Group I, as set out above in paragraph 1.[6]

4. At its twenty-third session (Vienna, 17 to 21 November 2014), Working Group I continued its work in accordance with the mandate received from the Commission. Following a discussion of the issues raised in working paper A/CN.9/WG.I/WP.85 in respect of best practices in business registration, the Working Group requested the Secretariat to prepare further materials based on parts IV and V of that working paper for discussion at a future session. In its discussion of the legal questions surrounding the simplification of incorporation, the Working Group considered the issues outlined in the framework set out in working paper A/CN.9/WG.I/WP.86, and agreed that it would resume its deliberations at its twenty-fourth session beginning with paragraph 34 of that document.

5. At its twenty-fourth session (New York, 13 to 17 April 2015), the Working Group continued its discussion of the legal questions surrounding the simplification of incorporation. After initial consideration of the issues as set out in Working Paper A/CN.9/WG.I/WP.86, the Working Group decided that it should continue its work by considering the first six articles of the draft model law and commentary thereon contained in Working Paper A/CN.9/WG.I/WP.89, without prejudice to the final form of the legislative text, which had not yet been decided. Further to a proposal from several delegations, the Working Group agreed to continue its discussion of the issues included in A/CN.9/WG.I/WP.89, bearing in mind the general principles outlined in the proposal, including the "think small first" approach, and to prioritize those aspects of the draft text in A/CN.9/WG.I/WP.89 that were the most relevant for simplified business entities. The Working Group also agreed that it would discuss the alternative models introduced in A/CN.9/WG.I/WP.87 at a later stage.

6. At its forty-eighth session, in 2015, the Commission noted the progress made by the Working Group in the analysis of the legal issues surrounding the simplification of incorporation and to good practices in business registration, both of which aimed at reducing the legal obstacles encountered by MSMEs throughout their life cycle. After discussion, the Commission reaffirmed the mandate of the Working Group under the terms of reference established by the Commission at its forty-sixth

[1] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 321.

[2] For a history of the evolution of this topic on the UNCITRAL agenda, see A/CN.9/WG.I/WP.97, paras. 5–20.

[3] A/CN.9/800, paras. 22–31, 39–46 and 51–64.

[4] Ibid., paras. 32–38.

[5] Ibid., paras. 47–50.

[6] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 134.

session in 2013 and confirmed at its forty-seventh session in 2014.[7] In its discussion in respect of the future legislative activity, the Commission also agreed that document A/CN.9/WG.I/WP.83 should be included among the documents under consideration by Working Group I for the simplification of incorporation.[8]

7. At its twenty-fifth session (Vienna, 19 to 23 October 2015), the Working Group continued its preparation of legal standards aimed at the creation of an enabling legal environment for MSMEs, exploring the legal issues surrounding the simplification of incorporation and on good practices in business registration. In terms of the later, following presentation by the Secretariat of documents A/CN.9/WG.I/WP.93, Add.1 and Add.2 on key principles of business registration and subsequent consideration by the Working Group of A/CN.9/WG.I/WP.93, it was decided that a document along the lines of a concise legislative guide on key principles in business registration should be prepared, without prejudice to the final form that the materials might take. To that end, the Secretariat was requested to prepare a set of draft recommendations to be considered by the Working Group when it resumed its consideration of Working Papers A/CN.9/WG.I/WP.93, Add.1 and Add.2 at its next session.[9] In respect of the legal issues surrounding the simplification of incorporation, the Working Group resumed its consideration of the draft model law on a simplified business entity as contained in working paper A/CN.9/WG.I/WP.89, starting with Chapter VI on organization of the simplified business entity, and continuing on with Chapter VIII on dissolution and winding up, Chapter VII on restructuring, and draft article 35 on financial statements (contained in Chapter IX on miscellaneous matters).[10] The Working Group agreed to continue discussion of the draft text in Working Paper A/CN.9/WG.I/WP.89 at its twenty-sixth session, commencing with Chapter III on shares and capital, and continuing with Chapter V on shareholders' meetings.

8. At its twenty-sixth session (New York, 4 to 8 April 2016), Working Group I continued its consideration of the legal issues surrounding the simplification of incorporation and on key principles in business registration. In respect of the former, the Working Group resumed its deliberations on the basis of working paper A/CN.9/WG.I/WP.89. Following its discussion of the issues in Chapters III and V,[11] the Working Group decided that the text being prepared on a simplified business entity should be in the form of a legislative guide, and requested the Secretariat to prepare for discussion at a future session a draft legislative guide that reflected its policy discussions to date (see A/CN.9/WG.I/WP.99 and Add.1).[12] In respect of key principles in business registration, the Working Group considered recommendations 1 to 10 of the draft commentary (A/CN.9/WG.I/WP.93, Add.1 and Add.2) and recommendations (A/CN.9/WG.I/WP.96 and Add.1) for a legislative guide, and requested the Secretariat to combine those two sets of documents into a single draft legislative guide for discussion at a future session.[13] In addition, the Working Group also considered the general architecture of its work on MSMEs, and agreed that its MSME work should be accompanied by an introductory document along the lines of A/CN.9/WG.I/WP.92, which would form a part of the final text and would provide an overarching framework for current and future work on MSMEs.[14] The Working Group also decided at its twenty-sixth session[15] that it would devote the deliberations of its twenty-seventh session to deliberations on a draft legislative guide on a simplified business entity, and its deliberations at its twenty-eighth session (New York,

[7] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), paras. 220 and 225, *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 134, and *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 321.

[8] Ibid., *Seventieth session, Supplement No. 17* (A/70/17), para. 340.

[9] See A/CN.9/860, para. 73.

[10] Ibid., paras. 76 to 96.

[11] See A/CN.9/866, paras. 22 to 47.

[12] Ibid., paras. 48 to 50.

[13] Ibid., paras. 51 to 85 and 90.

[14] Ibid., paras. 86 to 87.

[15] See A/CN.9/866, para. 90.

1 to 9 May 2017) to a consideration of a draft legislative guide reflecting key principles and good practices in business registration.

9. At its forty-ninth session (New York, 27 June to 15 July 2016), the Commission commended the Working Group for its progress in the preparation of legal standards in respect of the legal issues surrounding the simplification of incorporation and to key principles in business registration, both of which aimed at reducing the legal obstacles faced by MSMEs throughout their life cycle. The Commission also noted the decision of the Working Group to prepare a legislative guide on each of those topics and States were encouraged to ensure that their delegations included experts on business registration so as to facilitate its work.[16]

10. At its twenty-seventh session (Vienna, 3 to 7 October 2016), the Working Group continued its deliberations. As decided at its twenty-sixth session,[17] the Working Group spent the entire twenty-seventh session considering a draft legislative guide on a simplified business entity, leaving consideration of the draft legislative guide on key principles of a business registry for the first week of its twenty-eighth session (New York, 1 to 9 May 2017). The Working Group considered the issues outlined in working papers A/CN.9/WG.I/WP.99 and Add.1 on an UNCITRAL limited liability organization (UNLLO), beginning with section A on general provisions (draft recommendations 1 to 6), section B on the formation of an UNLLO (draft recommendations 7 to 10), and section C on the organization of an UNLLO (draft recommendations 11 to 13). The Working Group also heard a short presentation of working paper A/CN.9/WG.I/WP.94 of the French legislative approach known as an "Entrepreneur with Limited Liability" (or EIRL), which represented a possible alternative legislative model applicable to micro and small businesses.

11. At its twenty-eighth session (New York, 1 to 9 May 2017), the Working Group considered both topics currently on its agenda. Those deliberations commenced with a review of the entire draft legislative guide on key principles of a business registry (A/CN.9/WG.I/WP.101), save for the introductory section and draft recommendation 9 (Core functions of a business registry) and its attendant commentary, to which the Working Group agreed to revert at a future session. With respect to its deliberations regarding the creation of a simplified business entity (A/CN.9/WG.I/WP.99 and Add.1), the Working Group continued the work begun at its twenty-seventh session, and considered the recommendations (and related commentary) of the draft legislative guide on an UNLLO in sections D, E and F.

12. At its fiftieth session (Vienna, 3 to 21 July 2017), the Commission commended the Working Group for the progress it had made in its two areas of work on the preparation of a draft legislative guide on an UNCITRAL limited liability organization and a draft legislative guide on key principles of a business registry. In particular, the Commission welcomed the potential completion of the latter guide on business registration for possible adoption at the fifty-first session of the Commission (scheduled for 25 June to 13 July 2018).[18]

13. At its twenty-ninth session (Vienna, 16 to 20 October 2017), the Working Group continued its deliberations. As decided at its twenty-eighth session,[19] the Working Group spent the entire twenty-ninth session reviewing a draft legislative guide on key principles of a business registry (A/CN.9/WG.I/WP.106) save for the introductory section and part of the Annex (paras. 1 to 6 and 8 to 16 and recommendations 1 and 3/Annex) to which the Working Group agreed to revert at a future session.

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[16] *Official Records of the General Assembly, Seventy-first session, Supplement No. 17* (A/71/17), para. 224.

[17] A/CN.9/866, para. 90.

[18] *Official Records of the General Assembly, Seventy-second session, Supplement No. 17* (A/72/17), paras. 230–235.

[19] A/CN.9/900, para. 169.

II. Organization of the session

14. Working Group I, which was composed of all States Members of the Commission, held its thirtieth session in New York from 12 to 16 March 2018. The session was attended by representatives of the following States Members of the Working Group: Argentina, Brazil, Bulgaria, Burundi, Canada, China, Colombia, Czechia, El Salvador, France, Germany, Greece, Honduras, India, Indonesia, Israel, Italy, Japan, Kuwait, Mexico, Nigeria, Panama, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Singapore, Spain, Switzerland, Thailand, Turkey and United States of America.

15. The session was attended by observers from the following States: Algeria, Croatia, Finland, Grenada, Iraq, Paraguay, and Saudi Arabia.

16. The session was also attended by observers from the following international organizations:

(a) *Organizations of the United Nations system*: United Nations Industrial Development Organization (UNIDO); World Bank Group (WB);

(b) *Intergovernmental organizations*: Commonwealth Secretariat; Cooperation Council for the Arab States of the Gulf;

(c) *Invited international non-governmental organizations*: American Bar Association (ABA); Conseils des Notariats de l' Union Europenne (CNUE); European Law Students Association (ELSA); International Bar Association (IBA); National Law Center for Inter-American Free Trade (NLCIFT); the Law Association for Asia and the Pacific (LAWASIA) and Union International du Notariat (UINL).

17. The Working Group elected the following officers:

Chair: Ms. Maria Chiara Malaguti (Italy)

Rapporteur: Mr. Mohamad Almutairi (Kuwait)

18. In addition to documents presented at its previous sessions, the Working Group had before it the following documents:

(a) Annotated provisional agenda (A/CN.9/WG.I/WP.108);

(b) Note by the Secretariat on a draft legislative guide on key principles of a business registry (A/CN.9/WG.I/WP.109); and

(c) Note by the Secretariat on reducing the legal obstacles faced by micro, small and medium-sized enterprises (MSMEs) (A/CN.9/WG.I/WP.110).

19. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Preparation of legal standards in respect of micro, small and medium-sized enterprises.
5. Other business.
6. Adoption of the report.

III. Deliberations and decisions

20. The Working Group engaged in discussions in respect of the preparation of legal standards aimed at the creation of an enabling legal environment for MSMEs, in particular, on a draft legislative guide on key principles of a business registry on the basis of Secretariat documents A/CN.9/WG.I/WP.109 and the overarching document

setting out the context for its work on MSMEs in A/CN.9/WG.I/WP.110. The deliberations and decisions of the Working Group on these topics are reflected below.

21. After discussion, the Working Group agreed to transmit the texts of the draft legislative guide on key principles of a business registry and the overarching document setting out the context for UNCITRAL's current and future work on MSMEs to the Commission for consideration and adoption at its fifty-first session (New York, 25 June to 13 July 2018). Those texts, as revised by the Secretariat to reflect the deliberations and decisions of the Working Group at its thirtieth session, are contained in documents A/CN.9/940 and A/CN.9/941 respectively.

IV. Preparation of legal standards in respect of micro, small and medium-sized enterprises

A. Draft legislative guide on key principles of a business registry

1. Presentation of A/CN.9/WG.I/WP.109 and introductory observations

22. The Working Group was reminded that the draft legislative guide in A/CN.9/WG.I/WP.109 on key principles of a business registry included changes in the text of A/CN.9/WG.I/WP.106 that the Working Group had agreed to at its twenty-ninth session in Vienna, 16 to 20 October 2017.

2. Introduction

Paragraphs 1 to 7

23. The Working Group reviewed the Introduction of the draft guide (paras. 1 to 28) after deliberating on A/CN.9/WG.I/WP.110 in order to ensure consistency between the two texts (see paras 102 to 113 below). As a matter of drafting, the Secretariat was requested to make any necessary adjustments to paragraphs 1 to 7 to eliminate redundancy with A/CN.9/WG.I/WP.110, and to remove paragraphs 4, 6, and 7, which summarized aspects of the *travaux préparatoires*. The Working Group further agreed that paragraph 3 could be made more consistent with the commentary to recommendation 20 (see paras. 64 and 65 below) and should include reference to States in which certain businesses are not required to register due to their size and legal form.

Purpose of the present guide: paragraphs 8 to 15

24. After discussion, the Working Group agreed to simplify paragraph 14 by eliminating all subparagraphs (i.e. (a) to (g)) and maintaining only the chapeau with the necessary editorial adjustments. The Secretariat was also requested to reflect the importance of a user-centric approach regarding the business registry and registration with other authorities in paragraph 12. With those changes, the Working Group supported the substance of paragraphs 8 to 15 as drafted.

Terminology: paragraph 16

25. With respect to the defined terms in paragraph 16, the Working Group agreed to revise the following (see also paras. 28, 47 and 73 below):

(a) Good quality and reliable: to add "good quality and" before "reliable" at the beginning of the second sentence;

(b) Registered information: to replace "information that will be made public" with "publicly available information";

(c) Unique identifier: to insert "or a non-business entity" after "a business"; and

(d) One-stop shop: to delete the term "simultaneous".

It was further suggested to delete the definition of MSMEs and insert in A/CN.9/WG.I/WP.109 a concept of MSMEs along the lines of section B "Defining MSMEs" in A/CN.9/WG.I/WP.110 (para. 12).

Legislative drafting considerations: paragraph 17

26. It was noted that paragraph 17 would need to be redrafted to comply with the definition of "law" that the Working Group agreed upon in paragraph 16.

The reform process: paragraphs 18 to 28

27. After discussion, the Working Group agreed with the substance of paragraphs 18 to 28 of the legislative guide as drafted.

3. Objectives of a Business Registry

Objectives of the business registry: paragraph 29 and recommendation 1

28. It was observed that the terms "business registry" and "business registration system" were used interchangeably in the text of the draft legislative guide, but it was felt that "business registration system" might be understood to encompass a broader environment of business registration, including, for example, registration with other public authorities. The Working Group agreed to provide greater clarity to recommendation 1 by replacing "a system of business registration" with "a business registry". It was also determined to review the definitions at a later stage and the Working Group requested the Secretariat to note when suggestions were made. It was suggested to add a definition of the term "business registration" due to the frequent use of such term throughout the draft legislative guide.

29. The Working Group agreed to insert into paragraph 29 language along the lines of "States should adopt a user-centric approach where the goal at all times should be simple low-cost registration and simple low cost procedures. States should make it possible for businesses to register simultaneously with all mandatory authorities, providing only one set of documents and only one payment through physical outlets or electronic windows".

Purposes of the business registry: paragraphs 30 to 32 and recommendation 2

30. It was felt that an inclusion of a reference to the section on core functions of business registries, paragraphs 57 to 65, would ensure that the concepts were not duplicated in the text in paragraphs 30 to 32. After discussion, it was agreed to leave the text of recommendation 2 as drafted, but to provide greater clarity in the commentary regarding the meaning of the phrase "providing to a business an identity" in recommendation 2(a).

31. A concern was raised that the phrase "enacting State" might be more suitable for a model law than for a legislative guide, but it was noted that other UNCITRAL legislative guides have used the same terminology.

32. The Working Group agreed to insert "provided that fees are low" after "all such businesses to register in the business registry" in paragraph 31. In terms of drafting, proposals to eliminate the word "key" and to specify that registration "may" make businesses more visible were both supported by the Working Group.

Simple and predictable legislative framework permitting registration for all businesses: paragraphs 33 to 36 and recommendation 3

33. It was widely felt that any example of the type of discretion described in paragraph 33 would provide insufficient and potentially unclear guidance to enacting States. After discussion, the Working Group agreed to remove the example of discretion from paragraph 33 but to retain cross references to paragraphs 153 and 233.

34. There was consensus to remove the phrase "for all businesses" from the title and recommendation 3, and to change the word "rules" in recommendation 3(a) to "laws."

Key features of a business registration system: paragraphs 37 to 42 and recommendation 4

35. There was agreement in the Working Group to the following changes in the commentary to recommendation 4: (a) the language used in paragraphs 37 to 42 should be consistent with that of recommendation 4(d) (i.e. "good quality and reliable"); (b) in order to avoid redundancy, the definition of "good quality and reliable" should not be repeated in paragraph 38 and elsewhere in the draft text, since that phrase is a defined term in paragraph 16 of the draft guide. In the same way, definitions of other defined terms in the commentary should be deleted; (c) in the second sentence of paragraph 39, the phrase "the information that the entrepreneurs submit during the lifetime of the business" should be replaced with a sentence along the lines of "information that is submitted during the lifetime of the business; (d) in the last sentence of paragraph 39 the term "released" should be replaced with "disclosed"; and (e) in paragraph 41, the next to last sentence "However, ... or at least daily" should be made consistent with paragraphs 189 and 215 of the draft guide and include reference to those instances in which staff may be required to enter in the business registry record information submitted electronically.

36. The Working Group further agreed to change the title of Section C and recommendation 4 to "key features of a business registry" and to replace "methods" in recommendation 4(b) with "procedures" or "process". With those changes, the Working Group agreed with the substance of recommendation 4 as drafted.

Responsible authority: paragraphs 44 to 46 and recommendation 5

37. The Working Group heard a proposal to further clarify the language in recommendation 5(a) as it was said that the term "authority" did not properly reflect those instances in which States would decide to outsource registry operations to a private company. There was wide support in the Working Group, however, for the view that the text of the commentary to recommendation 5 made sufficiently clear that the use of the term "authority" referred to both public agencies and private entities mandated by States to operate the registry. After discussion, the Working Group agreed to replace the term "authority" in recommendation 5(a) with "entity", leaving the title of the section and the recommendation unaltered.

4. Establishment and functions of the business registry

Appointment and accountability of the registrar: paragraphs 47 to 49 and recommendation 6

38. It was noted that paragraph 48 had been amended to indicate that States "may" permit th registrar to delegate its powers. In that context, the Working Group agreed to modify recommendation 6(b) to read "and if and to what extent those powers and duties may be delegated."

39. In terms of drafting, the Secretariat was requested to remove the definition of registrar from paragraph 48 and to rely on the definition in paragraph 16.

Transparency in the operation of the business registration system: paragraphs 50 and 51 and recommendation 7

40. The Working Group agreed with the substance of paragraphs 50 and 51 and recommendation 7 of the legislative guide as drafted.

Use of standard registration forms: paragraph 52 and recommendation 8

41. The Working Group agreed with recommendation 8 of the legislative guide as drafted. After discussion, the Working Group determined to add the phrase "or allowed" after the word "required" in the final sentence of paragraph 52 and to eliminate the remainder of the sentence after the phrase "for the creation of the business."

Capacity-building for registry staff: paragraphs 53 to 56 and recommendation 9

42. After discussion the Working Group agreed to the substance of paragraphs 53 to 56 and recommendation 9 as drafted.

Core functions of business registries: paragraphs 57 to 65 and recommendation 10

43. Regarding the issue of access to information collected by the registry, it was felt that the recommendation should be consistent with the terminology in recommendations 4 and 39. The Working Group therefore agreed on the following change to recommendation 10(b): "Providing access to publicly available registered information" and to include cross-references to recommendations 33 and 34 in paragraph 62 in the commentary. After discussion, the Working Group also agreed to substitute "providing information" for "publicizing any relevant information" in recommendation 10(g).

44. The Secretariat was requested to modify the commentary as necessary to reflect the amendments to the recommendations. While it was noted that subparagraph 58(b) included the concept of information currency through its use of the defined phrase "good quality and reliable," it was felt that more emphasis could be placed on keeping information as current as possible in the commentary to provide greater clarity to recommendation 10(e). It was also noted that paragraph 58 addressed more than core functions, so the Secretariat was requested to include language along the lines of "core functions and desired outcomes" in the chapeau.

45. It was agreed to change "several" to "many" in paragraph 63 in reference to States that have reformed their registration systems. While there was some support within the Working Group to include one-stop shops in recommendation 10, given that they were discussed in paragraph 63, others were of the view that one-stop shops were not a core function of the business registry. After discussion, it was determined to retain the discussion of one-stop shops in the commentary but not to add a reference to them in the recommendation itself.

46. It was noted that a recent survey found no jurisdictions where business registries were required to perform intellectual property verification of business names, and there was agreement within the Working Group to eliminate the last two sentences after the phrase "such as ensuring" in paragraph 60. It was also noted that business names were addressed in the preceding paragraph and the Secretariat was requested to contain the discussion of business names to paragraph 59 but to retain the discussion of control procedures within the operation of the registry in paragraph 60.

47. Noting that the phrase "business name" had been used throughout the draft legislative guide to encompass names of businesses that had not yet been registered, there was agreement within the Working Group to redefine "business name" in paragraph 16 to something along the lines of "a name registered on behalf of a business, or a name used or planned to be used by a business".

Storage of information and access to it throughout the registry: paragraphs 66 to 68 and recommendation 11

48. The Working Group agreed to replace the phrase "all information collected or stored anywhere in the system is capable of being processed or accessed", in the third sentence of paragraph 67, with text along the lines of "all information collected or stored anywhere in the system can be processed or accessed" for improved clarity of the language. With that change, the Working Group agreed with the substance of paragraphs 66 to 68.

49. The Working Group heard various proposals on editorial adjustments to the text of recommendation 11, but it decided to consider those proposals at a later stage of its deliberations (see para. 89 below).

5. Operation of the business registry

Operation of the business registry: paragraph 69; Electronic, paper-based or mixed registry: paragraphs 70 to 73; Features of an electronic registry: paragraphs 74 to 78; Phased approach to the implementation of an electronic registry: paragraphs 79 to 87; Other registration-related services supported by ICT solutions: paragraphs 88 to 91 and recommendation 12

50. After discussion, the Working Group agreed to consider any possible change to recommendation 12 at a later stage (see para. 90 below), but agreed to make the following changes to the commentary: (a) to edit the middle sentence of paragraph 71 to read: "The adoption of such systems enhances data integrity, information security, registration system transparency, and verification of business compliance registration requirements, which helps avoid unnecessary or redundant information storage"; (b) to delete "which result in a more streamlined process and user-friendly services," from the chapeau of paragraph 72; (c) to describe the word "handling" with "improved" in subparagraph 72(c); (d) to include in subparagraph 72(e) cross-references to paragraphs 189 and 215; (e) to include in paragraph 85 cross-references to paragraphs 153 and 233; (f) to substitute "implemented" for "considered" in paragraph 86; and (g) to delete "i.e., notations in the registry that a particular business is no longer registered" from paragraph 89.

51. In addition, there was discussion within the Working Group about the technological terminology used in paragraphs 80 and 83. It was agreed that the terms should be more general to account for digital and mobile access. After discussion, the Working Group agreed to substitute "digital access" for "internet penetration" in paragraph 80 and to modify the first sentence of paragraph 83 to language along the following lines: "Platforms that enable businesses to apply and pay for registration online as well as to file annual accounts and update registration details as operations change can be developed once the State's technological capacity allow for it."

Electronic documents and electronic authentication methods: paragraph 92 and recommendation 13

52. After discussion, the Working Group agreed to modify recommendation 13(b) to read: "Regulate such use pursuant to principles whereby electronic documents and signatures are functionally equivalent to their paper-based counterparts and cannot be denied legal validity or enforceability for the sole reason that they are in electronic form."

A one-stop shop for business registration and registration with other authorities: paragraphs 93 to 103 and recommendation 14

53. It was felt that the type of information needed by various public authorities could differ, and after discussion, the Working Group supported a proposal to delete "requiring the same information" from the text of recommendation 14(b).

54. It was noted that the definition of "one-stop shops" in paragraph 16 differed from the text in paragraph 94 and the Secretariat was requested to ensure consistency in the text, particularly with reference to integrated forms for registration and payment. It was agreed to modify the second sentence of paragraph 94 to read something along the lines of "One-stop shops enable entrepreneurs to receive all of the information and forms they need in order to complete the necessary procedures to establish their business through single outlets rather than having to visit several different government authorities".

55. There was support within the Working Group to invert paragraphs 97 and 98 in order to highlight the less burdensome "one window" approach for entrepreneurs in paragraph 98 over the "one door" approach described in paragraph 97.

56. It was felt that the final sentence in paragraph 102 did not reflect the reality of one-stop shops in States where business registration would be found under the administrative oversight of the judiciary and the Working Group agreed to amend the

beginning of the sentence to read "There are examples of adoption of a one-stop shop approach also in those States ...".

57. In terms of drafting, proposals to change "public agencies" to "authorities" throughout the text and to change "database" to "platform" in paragraph 101 were supported by the Working Group. The Secretariat was also requested to redraft the last sentence of paragraph 103 to clarify that one-stop shops should not be expensive to maintain and should be self-sustainable.

58. It was further agreed to move the discussion of integration among public authorities in paragraph 68 to the commentary under recommendation 14, and to add to recommendation 14 a subsection (c), focusing on the exchange of information among the authorities (see para. 91 below). In this respect, it was noted that the term "interconnected" in recommendation 11 would need to be clarified (see para. 89).

Use of a unique identifier: paragraphs 104 to 111; Allocation of unique identifiers: paragraphs 112 and 113; Implementation of a unique identifier: paragraphs 114 to 117; Cross-border exchange of information among business registries: paragraphs 118 and 119 and recommendations 15, 16 and 17

59. A concern was raised that the notion of a unique identifier as the same business identification number used by all relevant authorities and not only by the business registry was not expressed with sufficient clarity in paragraphs 104 to 111 and the Secretariat was requested to eliminate any ambiguity in this part of the commentary.

60. With respect to paragraphs 107 and 110, it was noted that in certain States unique identifiers are allocated to non-business entities as well. The Working Group further agreed to change the term "must" into "may" in footnote 54 since changes in the legal form of the business do not require the allocation of a new identifier in all States.

61. With respect to recommendations 15 to 17, there was agreement in the Working Group to: (a) add text along the lines of "with a relationship with the enterprise being registered" between "authorities" and "sharing the information" in recommendation 16; and (b) add "or replaced by" after "linked to" in recommendation 17(b).

Sharing of protected data between public authorities: paragraph 120 and recommendation 18

62. There was support in the Working Group for a proposal to remove recommendations 18(b) and (c) and to adjust the rest of recommendation 18 along the following lines: "the sharing of protected data between public authorities pursuant to a unique identifier system should conform to the applicable law on the sharing of protected data between public authorities". In light of this change, the Working Group also requested the Secretariat to modify paragraph 120.

6. Registration of a business

Scope of examination by the registry: paragraphs 121 to 123; Accessibility of information of how to register: paragraphs 124 to 128 and recommendation 19

63. The Working Group agreed with the substance of paragraphs 121 to 128 and recommendation 19 as drafted.

Business permitted or required to register: paragraphs 129 to 132 and recommendation 20

64. The Working Group agreed to reverse the order of paragraphs 130 and 131, as it was considered more logical to first focus on instances of mandatory registration of businesses before instances of optional registration. In light of this change, the Secretariat was requested to reverse the order of recommendations 20(a) and (b).

65. A proposal that the phrase "and other entities" should be added in the first sentence of paragraph 130 (between "by the registry" and "including") received wide

support from the Working Group. As a matter of drafting, the Secretariat was requested to further clarify in the final sentence of paragraph 130 that businesses that are not required to register, but that voluntarily do so, must fulfil whatever obligations have been established by the law for those types of businesses. Finally, the Working Group agreed that the commentary in paragraph 132 could include reference to States in which certain businesses are not required to register due to their size and legal form.

Minimum information required for registration: paragraphs 133 to 138 and recommendation 21

66. While recommendation 21 focused on minimum requirements, it was widely felt within the Working Group that greater clarity could be provided to States by removing the word "minimum" from the chapeau. The Secretariat was requested to clarify paragraph 133, which implied that public and private limited liability companies should be treated the same.

Language in which information is to be submitted: paragraphs 139 to 141 and recommendation 22

67. It was noted that paragraph 141 was descriptive of practices in a number of States but it was widely felt that the paragraph would benefit from an emphasis on the registration process being subject to the State's language laws, if any, and would also benefit from simplification and the elimination of the discussion of provinces and regions. It was also agreed to delete "or electronic records" from the last line of paragraph 139.

Notice of registration: paragraph 142 and recommendation 23

68. The Working Group supported a proposal to incorporate the final sentence of paragraph 142 into the text of recommendation 23.

Content of notice of registration: paragraph 143 and recommendation 24

69. The Working Group agreed to include "and time" after "date" in recommendation 24(b).

Period of effectiveness of registration: paragraphs 144 to 147 and recommendation 25

70. After discussion, the Working Group agreed with the substance of paragraphs 144 to 147 and recommendation 25 as drafted.

Time and effectiveness of registration: paragraphs 148 to 151 and recommendation 26

71. The Working Group agreed with the substance of paragraphs 148 to 151 and recommendation 26 as drafted.

Rejection of an application for registration: paragraphs 152 to 156 and recommendation 27

72. There was agreement within the Working Group to add the word "only" after the word "business" in recommendation 27(a). In that context, the Working Group agreed to delete recommendation 27(d) and the final sentence of paragraph 155.

Registration of branches: paragraphs 156 to 158 and recommendation 28

73. Concern was expressed that the definition of "branch" as an "entity" in paragraph 16 did not properly reflect the legal nature of branches since an "entity" could be understood to have an independent legal personality. The Working Group agreed that "entity" should be replaced with a term along the lines of "establishment" and requested the Secretariat to adjust the definition accordingly. In response to a comment that the second and third sentences of paragraph 156 seemed to overlap by

referring to registration of national branches of foreign businesses, the Working Group agreed that the third sentence should be clarified to refer to the registration of national branches of national companies. The Working Group further supported the view that the last four sentences of paragraph 156 did not relate to the registration of branches but rather to the reason for having branches, a matter outside the scope of the draft guide, and it agreed to remove those sentences.

74. In respect to recommendation 28, it was further noted that both subparagraphs (a) and (c)(i) addressed the issue of when a branch should be registered and the Secretariat was requested to remove recommendation 28(c)(i).

7. Post-Registration

Paragraphs 159 and 160

75. The Working Group agreed with the substance of paragraphs 159 and 160 as drafted.

Information required after registration: paragraphs 161 and 162 and recommendation 29

76. The Working Group agreed to delete recommendation 29(b) as the filing of periodic returns would not be mandatory in every jurisdiction, and requested the Secretariat to make any necessary editorial adjustments to the remaining text of the recommendation. With that change, the Working Group agreed with the substance of paragraphs 161 and 162 and recommendation 29.

Maintaining a current registry: paragraphs 163 to 167 and recommendation 30; Making amendments to registered information: paragraphs 168 and 169 and recommendation 31

77. After discussion, the Working Group agreed with the substance of paragraphs 163 to 169 and recommendations 30 and 31 as drafted.

8. Accessibility and information-sharing

Access to business registry services: paragraphs 170 to 174 and recommendation 32

78. The Working Group heard a number of proposals to modify paragraphs 170 to 174 and recommendation 32 and agreed to consider them at a later stage (see paras. 92 to 95 below).

Public availability of information: paragraphs 175 to 182 and recommendation 33

79. The Working Group agreed to delete the phrase "that is relevant…status of that business" from paragraph 175 and left the Secretariat to make editorial changes if necessary. With those changes, the Working Group agreed with the substance of paragraphs 175 to 182 and recommendation 33 as drafted.

Where information is not made public: paragraphs 183 and 184 and recommendation 34

80. A request was made to clarify the rights and responsibilities of the registrar in recommendation 34, which could be understood to provide discretion to the registrar. The Working Group heard a proposal to eliminate recommendation 34(a) and another proposal to modify 34(a) by adding "which type of information cannot be publicly disclosed" after "protected data and" and eliminating the latter portion of 34(a). After discussion, the Secretariat was requested to redraft the recommendation based on the deliberations of the Working Group.

Hours of operation: paragraphs 185 to 187 and recommendation 35

81. While the Working Group supported the substance of paragraphs 185 to 187 and recommendation 35 as drafted, it was noted that the text of Part VI contained ambiguities in its use of the terms "business registry services" and "services of the business registry." In that context, the Working Group agreed to relocate recommendation 35 and its commentary to the beginning of Part VI to provide greater clarity to the text. The Secretariat was requested to check that Part for consistency in use of terminology regarding the registrar, the registry, registry services, and information services (see also para. 95 below).

Direct electronic access to submit registration, to request amendments and to search the registry: paragraphs 188 to 191 and recommendations 36 and 37

82. The Working Group agreed to eliminate the phrase "are permitted without requiring" and subsequent text from recommendations 36 and 37 and to replace it with "may be done remotely through electronic means." With those amendments, the Working Group agreed with the substance of paragraphs 188 to 191 and recommendations 36 and 37 as drafted.

Facilitating access to information: paragraphs 192 to 197 and recommendation 38

83. In paragraph 194, after the phrase "less accessible are" the Working Group agreed to include "limiting search criteria to unique business identifiers (as opposed to also allowing searches by business names)" and requested the Secretariat to make editorial changes if necessary. With that change, the Working Group agreed with the substance of paragraphs 192 to 197 and recommendation 38 as drafted.

Cross-border access to publicly available registered information: paragraphs 198 and 199 and recommendation 39

84. The Working Group agreed with the substance of paragraphs 198 and 199 and recommendation 39 as drafted.

9. Fees

Paragraphs 200 and 201

Fees charged for business registry services: paragraphs 202 to 204 and recommendation 40; Fees charged for information: paragraph 205 and recommendation 41; Publication of fee amounts and methods of payment: paragraph 206 and recommendation 42; Electronic payments: paragraph 207 and recommendation 43

85. The Working Group agreed with the substance of paragraphs 200 to 207 and recommendations 40 to 43 as drafted.

10. Liability and sanctions

Paragraphs 208 and 209

Liability for misleading, false or deceptive information: paragraphs 210 and 211 and recommendation 44; Sanctions: paragraphs 212 and 213 and recommendation 45; Liability of the business registry: paragraphs 214 to 219 and recommendation 46

86. The Secretariat was requested to move paragraph 211 to the commentary under recommendation 45, which dealt with sanctions. In terms of drafting, the Secretariat was requested to review the final sentence of paragraph 216 in an effort to make it more similar to the previous version of the draft legislative guide (see para. 212 of A/CN.9/WG.I/WP.106). With those changes, the Working Group agreed with the substance of paragraphs 208 and 209 and recommendations 44 and 45.

87. With respect to the liability of the business registry, a suggestion was made to clarify that the issue of liability would not necessarily be addressed by the laws governing the business registry. The Working Group did not take up the proposal and agreed with the substance of paragraphs 214 to 219 and recommendation 46 as drafted.

11. Operation of a business registry *(ctd.)*

Recommendations 11: Storage of and access to information contained in the registry; 12: Electronic, paper-based or mixed registry; and 14(c): A one-stop shop for business registration and registration with other authorities

88. The Working Group resumed consideration of the drafting of recommendations 11, 12 and 14(c) (see paras. 49, 50 and 58 above).

89. There was agreement in the Working Group that the opening phrase of recommendation 11 be redrafted along the following lines: "the law should establish that the business registry offices and repositories are interconnected…" and the Secretariat was requested to make editorial adjustments to the remaining text as needed. After further discussion, the Working Group agreed upon the following language to slightly adjust the text of the recommendation: "the law should establish that business registry offices are interconnected in regard to storage of and access to information received from registrants and registered businesses or entered by registry staff".

90. The Working Group agreed to leave recommendation 12 as drafted, but that drafting proposals could be considered at the fifty-first session of UNCITRAL (New York, 25 June to 13 July 2018).

91. With respect to recommendation 14(c) (see para. 58 above), there was support in the Working Group for a proposal along the following lines: [such an interface] "should provide for connectivity of all authorities with which a business is required to register and provide for the sharing of information on the business among the authorities as well as the use of a single, integrated application form for registration and payment to those authorities and a unique identifier."

12. Accessibility and information-sharing *(ctd.)*

Access to business registry services: paragraphs 170 to 174 and recommendation 32

92. In resuming its discussion of paragraphs 170 to 174 and recommendation 32 (see para. 78 above), the Working Group heard a proposal to insert a new recommendation into the section on "Access to business registry services" in order to promote equality of rights for women to register and start a business. It was pointed out that studies show that there is a disparity in access to business registration based on legal discrimination against women. Therefore the guide should include a recommendation on equal access to business registration for women. Because of the importance of women's entrepreneurship for economic development, it was said that such a recommendation would address instances in which legal disparities prevented businesses owned by women from realizing their full potential and resulted in those businesses operating in the informal economy. While there was wide support in the Working Group for the principles underpinning that proposal, concerns were raised that an exclusive focus on discrimination against women would create an imbalanced approach in the draft guide, since it would seem to suggest that discrimination based on grounds other than sex did not hinder the economic development of a State and the legal empowerment of other vulnerable groups. Moreover, it was stated that including such a recommendation in the legislative guide must be done with language and an approach consistent with those used in other Conventions and texts of the United Nations that provided for the promotion of human rights. It was also pointed out that the proposed recommendation was consistent with non-discrimination commitments of States under international human rights instruments, such as the Universal Declaration of Human Rights, as well as the obligations of States parties to the United

Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to eliminate discrimination against women. Finally, a concern was raised that the location of the proposal referred only to access of women to business registration, without consideration of the guide as a whole.

93. After discussion, the Working Group agreed that recommendation 32 be redrafted to refer to the text used in the opening sentence of paragraph 170 ("the law should…political view"). In addition, a new recommendation 33 should be inserted to read something along the lines of: "the law should ensure that women have equality in enforceable legal rights for registering and starting a business and avoid requirements for registering a business that treat applicants less favourably based on their gender". During discussions leading to the adoption of recommendations 32 and 33, a concern was raised that these recommendations only apply to the prohibition of discrimination against registrants and not against all of the users of the registry services.

94. The Working Group also agreed that commentary be drafted consistent with the proposed recommendation 33 and include a separate section B entitled "women's equality of rights". It was further suggested that the commentary should include appropriate reference to the United Nations Sustainable Development Goal 5 which calls on States "to end all forms of discrimination against all women and girls everywhere".

95. Finally, in response to reiterated concerns expressed about possible ambiguity arising from the use of the phrase "access to business registry services", the Secretariat was again requested to review the text for improved clarity of the language (see also para. 81 above).

13. Deregistration

Deregistration: paragraphs 220 to 224 and recommendations 47 and 48

96. After discussion, the Working Group agreed with the substance of paragraphs 220 to 224 and recommendations 47 and 48 of the legislative guide as drafted.

Process of deregistration: paragraphs 225 to 227 and recommendation 49; Reinstatement of registration: paragraph 228 and recommendation 50

97. The Working Group agreed with the substance of paragraphs 225 to 228 and recommendations 49 and 50 of the legislative guide as drafted.

14. Preservation of records

Preservation of records: paragraphs 229 to 232 and recommendation 51; Alteration or deletion of information: paragraphs 233 and 234 and recommendation 52; Protection against loss of or damage to the business registry record: paragraphs 235 and 236 and recommendation 53; Safeguard from accidental destruction: paragraph 237 and recommendation 54

98. The Working Group agreed to change "entered" to "submitted" in paragraph 234 and otherwise agreed with the substance of paragraphs 229 to 237 and recommendations 51 to 54 as drafted.

15. Annex: The underlying legislative framework

99. Differing views were expressed about the merits of eliminating the Annex, of retaining the Annex, and of integrating the Annex into the main text. It was felt that portions of the Annex could be incorporated into the introduction, but a concern was raised about providing recommendations in the introductory section of a legislative guide. After discussion, the Working Group agreed to relocate the content of the Annex as a whole into a new chapter, Part XI.

100. It was noted that the Secretariat would need to ensure that the terms in Part XI were consistent with the rest of the text and the definitions in paragraph 16, and that

some editorial adjustments would need to be made to eliminate repetition and to avoid inconsistencies, particularly in paragraphs 10 and 13. It was noted that section E of the Annex duplicated the title of section E of Part III, Operation of the business registry, in the draft legislative guide and would need to be amended by the Secretariat.

101. The Secretariat was further requested to delete the final sentences of paragraphs 1, 11 and 13, and to eliminate repetition of the term "simpler" in paragraph 7.

B. Reducing the legal obstacles faced by micro, small and medium-sized enterprises (MSMEs)

1. Presentation of A/CN.9/WG.I/WP.110 and introductory comments

102. The Working Group was reminded that at its twenty-sixth session (New York, 4 to 8 April 2016), it had considered document A/CN.9/WG.I/WP.92 (a previous version of A/CN.9/WG.I/WP.110) which had been prepared by the Secretariat to provide the overall context for work prepared by the UNCITRAL in respect of MSMEs. While the Working Group did not have sufficient time to consider A/CN.9/WG.I/WP.92 in detail, there was broad support for the proposal that a document along those lines could accompany its MSME work as an introduction to the final text and that it could provide an overarching framework for UNCITRAL's current and future work on MSMEs.

103. The Working Group was reminded that most references to data, statistics, and specific jurisdictions would be removed from the text of A/CN.9/WG.I/WP.110, but there was some support for a suggestion to retain general statistics on MSMEs in the global economy.

104. It was felt that the title of the document did not accurately reflect the contents therein, and suggestions were made to change the title to something along the lines of "Adopting an enabling legal environment for the operation of MSMEs" rather than emphasizing "reducing the legal obstacles." The Secretariat was requested to make this change based on the deliberations of the Working Group.

2. Micro, small and medium-sized enterprises (MSMEs): paragraphs 3 to 6

105. It was widely felt that the standards developed by the Working Group would be beneficial to all economies, regardless of their size and stage of development, and the Secretariat was requested to include a statement to that effect in the text of the document. It was noted that paragraph 4 referenced the Sustainable Development Goals, and could be expanded to reference UNCITRAL's work.

106. A suggestion was made to reorder the sequence of the discussion of MSMEs, but it was generally felt that a discussion of the importance of MSMEs in the global economy should precede their definition and descriptive nature, and that the section on creating a sound business environment for all business should follow.

3. The importance of MSMEs in the global economy: paragraphs 7 to 11; Defining MSMEs: paragraph 12; the nature of MSMEs: paragraphs 13 to 16

107. Some delegations were of the view that several of the characteristics of MSMEs described in paragraph 16 only applied to microbusinesses. Others were of the view that some of the characteristics would apply to larger businesses as well, depending on the jurisdiction. The Working Group agreed to change the chapeau to read "...despite their disparate nature (especially in terms of size), certain possible characteristics of MSMEs may be broadly shared, such as:".

4. Creating sound business environments for all businesses: paragraphs 17 to 20

108. It was noted that the document described certain legal obstacles faced by MSMEs, such as bureaucracy and cost, but that taxes were another obstacle. While it was noted that paragraph 42 discusses tax in its programme for States to consider to

make it more desirable for MSMEs to enter the legal economy, the Secretariat was requested to make reference to taxes in the commentary under section D.

5. The extralegal economy: paragraphs 21 to 30

109. It was noted that the document used the words "legally regulated economy/extralegal". The Working Group agreed to change those words to "formal/informal" in all its materials to make the term more consistent with how other organizations refer to businesses that operate outside of the legal environment.

110. There was some discussion about whether to remove references to taxation and social security authorities from paragraph 23, but the Working Group agreed to the substance of paragraphs 21 to 30 as drafted.

6. Ensuring that operation in the legally regulated economy is simple and desirable for MSMEs

Paragraph 31

Explaining the meaning of operating in the legally regulated economy: paragraphs 32 to 39

111. The Working Group accepted several proposals for minor changes: (a) to include a reference to labour laws in paragraph 34; (b) to soften language in paragraph 36 such as "primary" and "dramatically" in subparagraph 36(a) and "proving" in 36(d); (c) to clarify "legal forms" in subparagraphs 36(d) and (f); (d) to add reference in 36(f) to facilitating access to investment and venture capital; and (e) to remove reference to "Chamber of Commerce" in 36(h).

7. Making it desirable for MSMEs to operate in the legally regulated economy: paragraphs 40 to 42; Making it easy for MSMEs to operate in the legally regulated economy: paragraphs 43 to 52

112. A concern was raised that paragraph 49 did not accurately reflect the models of business forms that could provide limited liability protection and the segregation of assets without the creation of a separate legal personality. The Working Group agreed to modify the final sentence of paragraph 49 to read: "... stops short of legal personality, while being subject to fewer formal requirements." In that context, the Working Group also agreed to eliminate the reference to "limited liability" from paragraph 52.

113. The Working Group considered changing the order of paragraphs 49 to 52, the possibility of including paragraphs 51 and 52 in document A/CN.9/WG.I/WP.109, and inserting a discussion of other examples of flexible and simple business forms. After discussion, it was agreed to retain the order of the paragraphs as they appeared but the Secretariat was requested to create a new paragraph on simplified business incorporation regimes in a balanced manner that described various options.

V. Other matters

114. The Working Group recalled that its thirty-first session was tentatively scheduled to be held in Vienna from 8 to 12 October 2018. The Working Group confirmed that at that session it would resume its consideration of the draft legislative guide on an UNCITRAL Limited Liability Organization (while currently found in A/CN.9/WG.I/WP.99 and A/CN.9/WG.I/WP.99/Add.1, revised versions of those working papers will be prepared for the thirty-first session).